

# Notice of Allowability

Application No.

10/708,712

Examiner

Charles A. Marmor, II

Applicant(s)

FISHER, JOHN S.

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment filed 24 September 2004.
2. ☒ The allowed claim(s) is/are 1.
3. ☒ The drawings filed on 19 March 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

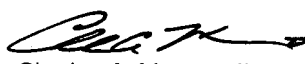
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☒ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
Charles A. Marmor, II  
Primary Examiner  
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### EXAMINER'S AMENDMENT

1. This Examiner's Amendment is responsive to the amendment filed September 24, 2004. The Examiner acknowledges the amendments to the specification and to claim 1. Claim 1 is currently pending.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

3. The application has been amended as follows:

In paragraph [0002], line 3, --, now U.S. Patent No. 6,709,408, -- has been inserted following "10/065,155".

### *Oath/Declaration*

4. The oath or declaration is defective because it does not identify parent application no. 09/683,282 for which the benefit of an earlier filing date is claimed under 35 U.S.C. 120. The Application Data Sheet filed March 19, 2004 erroneously cites the wrong patent number for said parent application of the instant application. Specifically, Applicant states that the present application is a divisional application of U.S. Serial No. 10/065,155 *which is a continuation-in-part of U.S. Patent No. 6,592,608 that issued on July 15, 2003.* However, U.S. Serial No.

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10/065,155 recites that application is a continuation-in-part of U.S. Serial No. 09/682,252, filed on August 9, 2001, which is now abandoned. U.S. Serial No. 09/683,282, which matured into U.S. Patent No. 6,592,608, is drawn to a bioabsorbable sealant that appears unrelated to the instant invention. The amendments to the specification filed September 24, 2004 correct a similar discrepancy.

Applicant is now required to submit a substitute declaration or oath to correct the deficiencies set forth hereinabove. The substitute oath or declaration must be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability" (PTO-37). Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136. Failure to timely file the substitute declaration (or oath) will result in **ABANDONMENT** of the application. The transmittal letter accompanying the declaration (or oath) should indicate the date of the "Notice of Allowance" (PTOL-85) and the application number in the upper right hand corner.

***Allowable Subject Matter***

5. Claim 1 is allowed over the prior art of record.
6. The following is an examiner's statement of reasons for allowance:

No prior art of record teach or fairly suggest a method for scraping cellular material from tissue by providing a fine needle aspiration biopsy needle having an open, beveled distal end forming a first sharp edge adapted to scrape cellular material when the needle is inserted into tissue and displaced from a proximal position to a distal position and a slot in the needle near the

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beveled distal end that is angled relative to a transverse axis of the needle such that a bottom of the slot is positioned distal to an opening of the slot forming a second sharp edge adapted to scrape tissue of cellular size when the needle is displaced from a distal position to a proximal position; communicating a vacuum to the proximal end of the needle to pull cellular material into a lumen of the needle; providing a syringe and an endoscope having a proximal end in fluid communication with the syringe, securing the fine needle aspiration biopsy needle to a distal end of an elongate guide tube and positioning the elongate guide tube within an operating channel of the endoscope; positioning the fine needle aspiration biopsy needle in operative relation to a lesion; and retracting the elongate guide tube and hence the fine needle aspiration biopsy needle so that cellular material is scraped from the lesion as the fine needle aspiration biopsy needle is pulled from the lesion; depositing the cellular material onto a slide, staining the cellular material, and subjecting the cellular material to microscopic inspection in the absence of any need to mechanically slice the cellular material.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (703) 305-3521. The examiner can normally be reached on M-TH (7:00-5:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles A. Marmor, II  
Primary Examiner  
Art Unit 3736

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October 12, 2004